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Inside

Coalition wants changes
in PPE classifications 2

Labor, industry differ over
EPA exemption 2

OSHA cites New York
garage chain 3

Injured workers oppose
Ballenger reform bill 3

EPA proposes partial ban
of pesticide DDVP 4

Ontario conservatives
disband safety agency 4

Painting contractors
criticize lead standard 5

BLS seeks comments on
workplace death census 5

OSHRC Update 6

OSHRC issues report
on strategic plan 7

NIOSH issues warning
about lung infection 7

Special Report
Hazard Communication 8

News Briefs 9

Federal Register 11

LABOR LAW

Court Rejects NLRB Rule On Workers Who Strike Over Safety Concerns

The Supreme Court this month upheld a lower court ruling that rejected the National Labor Relations Board's criteria to determine when employees can strike over hazardous working conditions (*TNS Inc. v Oil, Chemical and Atomic Workers International Union*, No. 94-2067).

The ruling means the NLRB can no longer require employees to present evidence of imminent workplace dangers to strike without the threat of being replaced.

The decision stems from a 1992 NLRB ruling in favor of TNS, a Tennessee defense contractor that hired replacement workers for employees who walked off the job after claiming they were exposed to radioactive particles. The strikers said the company, by using replacements, was engaging in unfair labor practices.

The NLRB disagreed and upheld TNS's action, saying the National Labor Relations Act requires workers to have "reasonable" belief that their safety or health is threatened and to provide evidence to support (continued on 7)

OSHRC

Clinton Likely To Nominate Former DOL Attorney To Fill OSHRC Vacancy

President Clinton is expected to name former Labor Department attorney Richard Gross to fill the vacancy on the Occupational Safety and Health Review Commission.

Richard Gross, an attorney with the Orange, Conn., law firm of Cantor, Floman, Russell and Gross, has been undergoing a background check by the White House since he was mentioned as a possible nominee, a DOL source said. Only candidates under serious consideration are subject to such an investigation, the source said.

The White House has not informed

DOL of the status of the inquest, the source said. "We have not gotten any final word from the White House on Mr. Gross." Richard Socarides, White House liaison to DOL, was unavailable for comment.

Gross's name appeared on a short list of candidates Clinton reportedly was considering last summer. The list also included Cynthia Atwood, former associate solicitor of labor for OSHA and currently with DOL's office of administrative appeals.

If nominated, Gross would need Senate (continued on 7)

OSHRC Adjusts To Increased Caseload, More Complex Cases

The Occupational Safety and Health Review Commission has accomplished most of its goals for streamlining the agency as outlined in its 1995-96 "strategic plan" released early this year, according to a report the commission released this month.

The plan was drafted to help OSHRC deal with a growing number of complex cases resulting from OSHA's recent decision to concentrate on employers with the most egregious violations.

Commission Chairman Stuart Weisberg told *OW* recently that OSHA's new enforcement strategy will likely result in fewer cases overall because the agency is issuing fewer citations for minor infractions such as hazard communication. However, he said the larger citations usually create considerably more work for OSHRC judges and staff.

To ensure "fair and timely" adjudication of workplace health and safety disputes, the commission:

- ▶ added one additional administrative law judge in 1995 and plans to add two more in 1996;
- ▶ cut the ALJ backlog in half, and cut the commission backlog by 10 percent;
- ▶ published a "user-friendly" guide to procedures which explains in layman's terms how to prepare for and present a case. The guide is now sent to every party with a case before the commission;
- ▶ implemented the E-Z trial system on Oct. 1, which streamlines the trial process for less complex cases;
- ▶ redesigned the format for judge's decisions to make them more readable; and
- ▶ improved training for new judges and legal staff.

— Cynthia Rockwell

NLRB (continued from 1)

their concerns. The NLRB ruled that the TNS strikers failed to meet that criteria.

In 1995, the U.S. Court of Appeals for the District of Columbia overturned NLRB's ruling and the criteria it used. (*Oil, Chemical and Atomic Workers International v NLRB*, No. 93-1299). The NLRB plans to reopen debate on the issue, a labor source said.

— Mark Davidson

OSHRC (continued from 1)

confirmation. He would fill the vacancy created by Commissioner Edwin Foulke whose term expired April 27.

OSHRC Chairman Stuart Weisberg recently told *OW* that appointment of a third commissioner is vital to the commission's goal of deciding cases swiftly. OSHRC this month has implemented a policy to resolve all OSHA citation cases within a year. "Obviously having three commissioners instead of two will help us achieve that goal," said Weisberg, a Clinton appointee. The other commissioner is Velma Montoya, who was appointed by former President Bush.

— Dan Giosta

NIOSH Issues Warning To Construction Workers About Lung Infection

NIOSH is warning construction workers about the recent outbreak of an acute lung infection in the Mississippi and Ohio River valleys. The illness, called histoplasmosis, is caused by inhaling contaminated dust.

Three weeks after demolishing an abandoned city hall building in Prestonsburg, Ky., last June, five workers required treatment for a respiratory infection. A Kentucky Department of Health Services investigation found 19 of the 55 people who had worked in or near the building during the demolition developed the same infection.

Two months earlier, 13 employees required treatment for a respiratory infection after they repaired an attic in their office building in Russell, Ky., 80 miles north of Prestonsburg. In both cases, the workers were diagnosed with histoplasmosis.

KDHS reports histoplasmosis is most likely caused by breathing infected spores spread by contaminated bird and bat manure. During the demolition project, workers observed a colony of bats, as well as a two-foot-deep pile of debris covered with guano, in the vicinity of the city hall. In the earlier incident, bird and bat manure had accumulated in the attic.

NIOSH urges workers to wear personal protective equipment including respirators, eye protection, gloves and protective clothing. NIOSH also encourages workers to take proper precautions while handling possibly contaminated material.

— Dan Giosta